

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Third Periodic Review of the)	MB Docket No. 07-91
Commission's Rules and Policies)	
Affecting the Conversion)	
To Digital Television)	

COMMENTS OF CBS CORPORATION

CBS Corporation ("CBS") hereby respectfully submits its comments in connection with the Commission's Third Periodic Review of the transition from analog to digital television ("DTV"). We are in broad general agreement with the proposals set forth in the Commission's *Notice of Proposed Rulemaking* ("Notice"), and suggest some fine tuning in only a few areas.

1. Deadlines for Construction of Authorized Digital Facilities.

a. Stations With the Same Pre-Transition and Post-Transition Channels.

The Commission proposes that stations having the same pre-transition and post-transition DTV channel, which are not facing unique technical challenges, and which were granted extensions of construction permit by the FCC's recent *Construction Deadline Extension Order*,¹ be required to complete construction of their DTV facilities

¹ See, *DTV Build-Out; Applications Requesting Extension of the Digital Television Construction Deadline*, Order, FCC 07-91 (rel. May 18, 2007) ("*Construction Deadline Extension Order*"). See also *DTV Build-Out; Requests for Waiver of July 1, 2005 and July 1, 2006 "Use or Lose" Deadlines; Requests for Waiver of the August 4, 2005 "Checklist" Deadline*, Order, FCC 07-90 May 18, 2007) ("*Use or Lose Order*").

by the deadline established in that order (*i.e.*, six months from its release date).² In this regard, the Commission notes that stations in this situation “have already had a significant period of time in which to build their post-transition facilities and, indeed, should already have these facilities constructed.”³

At the same time, the Commission proposes to significantly tighten its standards for granting further extensions of construction permit, rather than employing its existing, more flexible criteria under which extensions are available where failure to meet the construction deadline is “due to circumstances that are beyond the licensee’s control” and where “the licensee has taken all reasonable steps to resolve the problem expeditiously.”⁴ Under the Commission’s new standard, for example, extensions would no longer be available because of delays in delivering necessary equipment.⁵

Although CBS has no general quarrel with these proposals, there are situations in which their application would be clearly inappropriate. Perhaps the most obvious is that of CBS’s owned television station in Denver, KCNC-TV, and the three other stations whose digital facilities will be located on a new tower being constructed on Lookout Mountain in Jefferson County, Colorado. As the Commission is well aware, until December 22, 2006, when the president signed into law a measure preempting Jefferson County’s land use laws and regulations in regard to the contemplated tower,⁶

² Notice at ¶ 70.

³ *Id.*

⁴ See, 47 C.F.R. § 73.624(d) (3).

⁵ Notice at ¶ 81.

⁶ See, Public Law No. 109-466, 120 Stat. 3484.

construction had been blocked since 1999 by protracted zoning proceedings and litigation.⁷

Following enactment of the above statute, Lake Cedar Group, the consortium of stations to be located on the tower, wasted no time in beginning construction. Site clearance and preparation began in January 2007, followed by the commencement of work on the transmitter building in July 2007. Erection of the tower is scheduled to begin in September 2007 and completion of construction is projected to occur in March 2008. Thus, assuming all goes accordingly to plan, the tower will have gone up within a period of 14 or 15 months – a much shorter period than the three years allowed by Section 73.3598 of the Commission’s rules to complete construction of a new facility.⁸

In adopting Section 73.3598, the Commission made clear its belief that a three-year construction period “built in an adequate safety valve for diligent permittees to complete construction within a permit’s term.”⁹ While acknowledging that a permittee might encounter a number of circumstances that could legitimately cause delay, the Commission found that those factors were “generally [not] so insurmountable that their effects cannot be overcome during the course of three years.”¹⁰ At the same time, however, the Commission adopted tolling provisions so that periods during which a

⁷ See, *City of Golden et al. v. Lake Cedar Group, L.L.C., et al.*, No. 03CV3045, Jefferson County District Court, Colorado; see also *In the Matter of Waiver of Digital Testing Pursuant to the Satellite Home Viewer Act*, MB Docket No. 05-317, 21 FCC Rcd 12894 (2006).

⁸ 47 CFR § 73.3598.

⁹ *Memorandum Opinion and Order*, MM Docket Nos. 98-43, 94-149, *In the Matter of Biennial Regulatory Review*, 14 FCC Rcd 17525, 17539 (1999) (internal quotations omitted).

¹⁰ *Id.*

permit was “[]ncumbered by an administrative or judicial review or by an act of God” would not count against a permittee's three-year construction allowance.¹¹

The construction permits of KCNC and the other Lake Cedar Group stations have been “encumbered” by administrative or judicial proceedings and appeals for almost the entire period for which they have been outstanding.¹² Until January of this year, the commencement of construction was effectively prohibited by court injunction. Thus the current deadline of November 18, 2007 -- six months from the release date of the *Construction Deadline Extension Order* -- would give the Lake Cedar Group stations less than an eleven month “unencumbered” period to complete construction. This would be manifestly unfair.

CBS therefore suggests that the Commission make clear that, where a construction permit has been extended because of circumstances that would have justified tolling under Section 73.3598, requests for further extension will continue to be evaluated under existing criteria. Those criteria, which allow the Commission to take account of construction difficulties not rising to the level of an act of God or Judiciary -- for example, the unavailability of tower crews -- would plainly be appropriate in such

¹¹ *Report and Order*, MM Docket Nos. 98-43, 94-149, *In the Matter of Biennial Regulatory Review*, 13 FCC Rcd 23056, 23090 (1998) (internal quotations omitted) (“*Biennial Regulatory Review*”).

¹² *See, e.g., In the Matter of Waiver of Digital Testing Pursuant to the Satellite Home Viewer Act*, MB Docket No. 05-317, 21 FCC Rcd 12894 (2006). In promulgating the current version of Section 73.3598, the Commission expressly stated that a “three-year construction period provides ample time to complete [the zoning approval] process and construct the station or choose a new site free of zoning difficulties.” *Biennial Regulatory Review*, *supra* 13 FCC Rcd at 23091. However, it also noted that, in keeping with its decision to toll the three-year period for administrative or judicial review, “the pendency of an appeal in a local court of a final zoning board determination would qualify for tolling.” *Id.*

circumstances.

b. Stations With a Different Post-Transition Channel From Their Pre-Transition DTV Channel.

Recognizing that stations moving to a new final DTV channel will “face a greater challenge than stations that will remain on the same DTV channel for post-transition operations,”¹³ the Commission proposes to relieve such stations of any further obligation to build out pre-transition facilities. At the same time, however, the Commission proposes to establish February 17, 2009 as a hard deadline by which the final, post-transition facilities of such stations must be operational, with extensions to be granted only for circumstances that would justify tolling under Section 73.3598.¹⁴

We are in agreement that stations that will be moving to a new post-transition channel should not, at this point, be required to expend further resources on the construction of facilities that will, at most, be used for another eighteen months. Nonetheless, although licensees should now bend all possible efforts toward completion of their full authorized DTV facilities, the “tolling” standard proposed by the Commission for extending the February 17, 2009 deadline may be insufficiently flexible.

The final DTV transition is only a year-and-a-half away. This is a very short time for stations that are switching channels to apply for and be granted a construction permit, design an antenna, order and receive delivery of equipment, and build their facilities.¹⁵

¹³ Notice at ¶ 60.

¹⁴ Notice at ¶ 86.

¹⁵ Indeed, all stations on a multi-user tower on which some stations are changing frequencies may have challenges of immense complexity to overcome. For example, in the case of Sutro Tower in San Francisco, two DTV stations presently on frequencies that are out of the core will relocate to frequencies presently utilized by in-core analog stations. This will necessitate the testing and

We suggest that it may be more appropriate for the Commission to consider applications for extension of this deadline under its existing criteria, which allow more generally for extensions due to circumstances beyond a licensee's control, provided the licensee has done everything reasonably possible to resolve the problem.

In this regard, we note that the Digital Television and Public Safety Act of 2005 (the "DTV Act")¹⁶ directs only that (1) analog television broadcasting cease as of February 18, 2009 and (2) all digital television broadcasting be within the specified spectrum as of that date. Congress did not require that all digital stations must be operating with their full allotted facilities by the deadline. Thus the Commission may refrain from establishing an absolute deadline for such operation.

simultaneous operation of varying combinations of 24 signals during the period from December 2008 through February 17, 2009 (eleven analog signals, eleven existing DTV stations and the new DTV signals of the two stations moving to a new permanent frequency). After February 18, 2009, the analog antennas of ten of the eleven stations (KGO-DT will move to the present Channel 7 facilities of KGO-TV) will be removed from the candelabra platform of the tower structure and new DTV antennas will be installed. It is estimated that the permanent DTV facilities for all eleven stations will not be fully in place until late 2009 or early 2010.

In the case of the multi-user candelabra tower in Baltimore, of which CBS is a shareholder, the CBS station and the Scripps Howard station will be changing frequencies for their respective permanent DTV facilities. CBS will move from Channel 38 to its NTSC frequency on Channel 13. Scripps Howard will change from out-of-core Channel 52 to CBS's former DTV Channel 38. Both stations will be required to utilize directional antennas to minimize interference to other stations. The planning for installing the new directional antennas for the permanent WJZ-DT and WMAR-DT facilities, and the resultant tower modifications to accept these new antennas, has been in progress for approximately one year. The new Channel 13/Channel 38 antenna stack cannot be installed until after the present WMAR Channel 2 analog and Channel 52 digital antenna stack is removed.

¹⁶ Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) (*codified at* 47 U.S.C. §§ 309 (j) (14) and 337(e)).

We do not suggest that extensions of the February 17, 2009 deadline be lightly granted, even where a station is changing to a new post-transition channel. Nor will such stations lack compelling motivation to build out their full facilities by the earliest possible date, since analog broadcasting will no longer be available as a means of reaching their audiences once the final transition occurs. We propose only that the Commission should be prepared to consider the full range of circumstances that may delay construction, and are beyond a licensee's reasonable control, before declaring delinquent a licensee facing the "greater challenge" of completing new facilities, on a new channel, in the eighteen months that remain before the transition date.¹⁷

In order to minimize the effect on viewers, stations seeking extension of the February 17, 2009 deadline might be required, wherever possible, to apply for an STA allowing temporary operation from facilities that, although not reaching the entire service area contemplated by the DTV Table, would still provide the maximum amount of service to the public feasible at the time.¹⁸ Again, since stations operating with less than their full allotted facilities will be at a significant competitive disadvantage, there is little reason to fear that a more flexible extension standard will lead to a lack of diligence in completing those facilities.¹⁹

¹⁷ We note in this regard the Commission's suggestion that stations failing to meet the deadline may be subject to automatic forfeiture of their construction permits. *Notice at* ¶ 86. To the extent that a sanction of such severity is contemplated, the availability of a safety valve to avoid manifest injustice is even more essential.

¹⁸ *See Notice at* ¶ 89, where the Commission discusses the possibility of requiring service pursuant to an STA as an alternative to imposing a hard deadline for the build out of a licensee's full allotted facilities.

¹⁹ Once stations have made their initial transition to their new channels, we agree with the Commission's proposal that the deadline for build out of subsequently-approved modifications should be governed by the tolling standards of Section

2. Applications for Expanded Facilities.

The *Notice* tentatively concludes that the Commission should not presently accept applications requesting facilities that would serve a larger area than those allotted in the final DTV Table. However, recognizing that some stations may be unable to build precisely the facilities specified in the Table (for instance because an antenna producing the exact pattern prescribed by Appendix B is not available), the Commission asks whether this restriction should apply to stations that would otherwise be forced to utilize facilities providing significantly reduced service.

The Commission has identified a significant and very real problem for some stations that are changing DTV channels. CBS respectfully urges the Commission to carve out an exception to its proposed processing rules in order to reduce the impact on affected stations and the public.

One of CBS's owned television stations -- KSTW in Tacoma, Washington -- faces the very situation that the Commission has described. KSTW, which has been broadcasting digitally on Channel 36 during the transition, will return to its NTSC frequency, Channel 11, as its final digital assignment. Because the service area of the Channel 36 operation, which employs a directional antenna pattern, will be carried over to KSTW's final Channel 11 facility -- and since Channel 11 shares an antenna with digital Channel 36 but has a differing electrical pattern -- our engineers calculate that a KSTW digital operation on Channel 11 would have to reduce power to 23.9 percent (a 6.22 dB reduction) in order to avoid a contour extension. A figure representing the differing antenna patterns of KSTW's analog operation on Channel 11, and the one prescribed by the DTV Table to replicate the Channel 36 service area, is attached as

73.3598.

Exhibit A.²⁰

In proposing not to accept CP applications that would extend a station's service contours in any direction, the Commission stresses the importance of its being able to process applications expeditiously at this stage of the transition. The Commission explains that this end will be served by avoiding the interference analyses that contour-expanding applications would entail.

CBS agrees that simplifying the Commission's review of CP applications during the final stages of the digital transition is a sound objective. However, where avoiding interference analysis can only be achieved by requiring power reductions that would result in a significant loss of service to the public -- and that would put a relative handful of television stations at a marked competitive disadvantage at the very outset of the all-digital era -- we respectfully submit that expedition should yield to other considerations. Given what we assume is the relatively small number of situations that would fall within the scope of the exception we advocate to the Commission's proposed processing rules, the Commission's handling of DTV applications should not be unacceptably slowed by the necessity of performing interference analyses in these cases.

3. **Interference Criteria for Maximization Applications.**

On a related issue, the Commission proposes to set the limit on acceptable interference for the purpose of post-transition maximization applications at 0.5%. Significantly, this is not a *new* interference standard; the Commission indicates that the proposed standard would not allow *any* increase in situations where the amount of interference currently caused exceeds 0.5 percent.

²⁰ Exhibit A was prepared by Joseph M. Davis, P.E., a consulting engineer who has worked closely with CBS on matters relating to the digital channel assignment process.

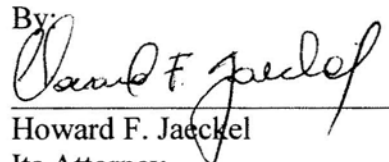
While an overall interference limit is clearly necessary, a standard that in many situations will effectively allow *no* increase may be too stringent to allow licensees the flexibility to make some adjustment in their facilities. CBS suggests that whatever standard the Commission ultimately adopts use as a baseline existing interference under the final DTV Table of Allotments.

CONCLUSION

The conversion of the nation's system of television broadcasting to all-digital transmission is a process of immense complexity that will inevitably present broadcasters with difficult challenges as the date for the final transition approaches. Those challenges, both foreseen and unanticipated, will call for resourcefulness by broadcasters and flexibility on the part of the Commission. We urge the Commission to keep the need for flexibility in mind as it crafts rules and procedures for this last stage of the process.

Respectfully submitted,

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EXHIBIT A

---Relative Field---			
DTV	NTSC		
Table	Actual		dB over
0	0.550	0.953	4.77
10	0.666	0.996	3.50
20	0.799	0.989	1.85
30	0.911	0.931	0.19
40	0.960	0.831	0.00
50	0.876	0.705	0.00
60	0.682	0.572	0.00
70	0.496	0.455	0.00
80	0.373	0.375	0.05
90	0.352	0.338	0.00
100	0.426	0.329	0.00
110	0.499	0.329	0.00
120	0.530	0.338	0.00
130	0.500	0.375	0.00
140	0.423	0.455	0.63
150	0.347	0.572	4.34
160	0.360	0.705	5.84
170	0.454	0.831	5.25
180	0.553	0.931	4.52
190	0.679	0.989	3.27
200	0.828	0.996	1.60
210	0.950	0.953	0.03
220	1.000	0.867	0.00
230	0.936	0.753	0.00
240	0.771	0.632	0.00
250	0.567	0.524	0.00
260	0.409	0.447	0.77
270	0.389	0.405	0.35
280	0.493	0.390	0.00
290	0.609	0.390	0.00
300	0.652	0.405	0.00
310	0.598	0.447	0.00
320	0.468	0.524	0.98
330	0.362	0.632	4.84
340	0.368	0.753	6.22
350	0.457	0.867	5.56

max: 6.22

